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Legal Background Briefing on ...

The Regulation of Transportation Network Companies — Rights, Requirements, and Limitations

Overview

This Briefing provides legal background information relating to the rights, requirements, and limitations of transportation network companies (TNCs), drivers, riders, insurers, local governments, and the Iowa Department of Transportation (DOT) as set forth in 2016 Iowa Acts, chapter 1101 (House File 2414). Except as otherwise indicated, references to the Iowa Code are to the 2017 Iowa Code.

Background

Generally, a local authority¹ has the power to license and regulate the operation of vehicles offered to the public for hire that are used principally in intracity operation on the streets and highways under the local authority's jurisdiction.² Certain local authorities, such as the City of Des Moines and the City of Iowa City, have exercised this power to permit and regulate the operation of TNCs such as Uber and Lyft within their respective jurisdictions. In May 2016, the General Assembly passed, and the Governor signed, House File 2414, which provides for uniform statewide regulation of TNCs and sets forth certain rights, requirements, and limitations of the parties involved in or affected by the operation of TNCs. The Act takes effect January 1, 2017.³ On that date, all local ordinances, regulations, and rules not consistent with the Act are void.⁴

Transportation Network Companies Regulation by Department of Transportation. A TNC is an entity that uses a digital network to connect TNC riders to TNC drivers who provide prearranged rides.⁵

A TNC is prohibited from operating in Iowa without a permit issued by the DOT.⁶ To obtain a permit, a TNC must submit an application to the DOT containing specific identification information, a signed statement agreeing to comply with the requirements of Iowa Code chapter 321N, and proof of all of the following: the TNC complies with all applicable insurance requirements, the TNC has established a zero tolerance policy for the use of drugs and alcohol, the TNC requires drivers' vehicles to comply with all applicable motor vehicle equipment requirements, the TNC has adopted and is enforcing nondiscrimination and accessibility policies, and the TNC has established record retention guidelines for records relating to drivers and prearranged rides. The application must be accompanied by a \$5,000 fee.⁷ If granted, the permit is valid for one year.⁸

A TNC's zero tolerance policy prohibiting the use of drugs and alcohol must apply to all TNC drivers while the drivers are providing prearranged rides or are logged on to the TNC's digital network and available to receive transportation requests from potential riders. The policy must include provisions providing for the investigation of alleged violations of the policy and the suspension of drivers under investigation.⁹ A TNC's record retention guidelines must provide for the retention of prearranged ride records for at least six years after the date a ride was provided, and must also provide for the retention of driver records for at least six years after the date of a driver's last activation on the TNC's digital network. If a TNC is notified that a record is material to a judicial proceeding, the TNC is instead required to retain the record for at least two years after final disposition of the judicial proceeding.¹⁰

Authorization of and Notification to Drivers. Prior to permitting an individual to act as a driver on a TNC's digital network, the TNC must perform certain actions. The TNC must require the individual to submit an application to the TNC containing the

individual's name, address, and age, and including copies of the individual's driver's license, registration for the vehicle the individual will use to provide prearranged rides, and proof of insurance covering the individual's use of the vehicle in the types and amounts required for TNC drivers. The TNC is also required to conduct a local and national criminal background check on the individual, conduct a search of the national sex offender registry database for the individual, and obtain and review a driving history research report on the individual. Finally, the TNC must obtain a disclosure form signed by the individual notifying the individual of the individual's duty to inform any other owner or lienholder of the vehicle of the individual's intention to use the vehicle as a TNC driver.¹¹

A TNC is prohibited from knowingly allowing an individual to act as a driver if the individual is disqualified from acting as a driver in any way. See the section of this Briefing related to transportation network company drivers for a list of such disqualifications.

Before a driver may accept a request from a rider for a prearranged ride on a TNC's digital network, the TNC must disclose to the driver in writing the types, amounts, terms, and limits of any insurance provided by the TNC to the driver, and notify the driver that the driver's own insurance policy, depending on the policy's terms, may not provide any coverage while the driver is logged on to the TNC's digital network and is available to receive requests for a prearranged ride, or while the driver is engaged in a prearranged ride.¹²

Insurance Requirements. A TNC, a TNC driver, or a combination of the two is required to maintain insurance that recognizes the driver is a TNC driver or otherwise uses a motor vehicle to transport passengers for compensation, and that covers the driver while the driver is logged on to a TNC's digital network and while the driver is engaged in a prearranged ride.¹³ While a driver is logged on to a TNC's digital network and is available

to receive requests for a prearranged ride, insurance must cover the driver in the amount of at least \$50,000 for bodily injury to or death of one individual in any one accident, at least \$100,000 for bodily injury to or death of two or more individuals in any one accident, and at least \$25,000 for property damage in any one accident.¹⁴ While a driver is engaged in a prearranged ride, insurance must cover the driver in the amount of at least \$1,000,000 for bodily injury to or death of one or more individuals and property damage in any one accident.¹⁵ If insurance maintained by a driver lapses or does not provide coverage in the required amounts, insurance maintained by the TNC must provide the coverage, and the TNC has a duty to defend any claims.¹⁶

In a claims coverage investigation, any involved TNC and any insurer providing coverage are required to cooperate to facilitate the exchange of relevant information with one another.¹⁷

Requirements Relating to Riders. A TNC must disclose to a rider a picture that prominently displays the face of the TNC driver, and the make, model, and registration plate number of the vehicle used by the driver.¹⁸ A TNC is also required to transmit an electronic receipt to a rider detailing the origin and destination of the trip, the total time and distance of the trip, and an itemized account of the total fare paid by the rider.¹⁹

A TNC is prohibited from disclosing a rider's personal information to a third party unless the rider consents to the disclosure, the disclosure is required by law, the disclosure is required to protect or defend the terms of use of the TNC's services, or the disclosure is required to investigate a violation of the terms of use.²⁰ However, a TNC may disclose a rider's name and telephone number to the driver providing a prearranged ride to the rider in order to facilitate the identification of the rider by the driver, or to facilitate communication between the rider and the driver.²¹

Transportation Network Company Drivers

A TNC driver is an individual who receives connections to potential TNC riders and other related services from a TNC in exchange for payment of a fee to the TNC, and who uses a vehicle to offer or provide prearranged rides to riders upon connection through a TNC's digital network in return for compensation or payment of a fee.²² A TNC driver is not a chauffeur, and is not required to obtain a chauffeur's license.²³

An individual is disqualified from being a TNC driver if any of the following apply:

- The individual does not have a valid driver's license.
- The individual is restricted to operating vehicles equipped with an ignition interlock device.
- The individual's driving privileges have been suspended, revoked, barred, canceled, denied, or disqualified in the prior three-year period.
- The individual has been convicted of more than three moving violations in the prior three-year period.
- The individual has been convicted of violating Iowa Code section 321.218 (operating without a valid driver's license), 321.277 (reckless driving), or 321J.21 (operating without a valid driver's license due to an operating-while-intoxicated violation), or Iowa Code section 321A.32, subsection 1 (operating without a valid driver's license due to a motor vehicle financial responsibility violation), in the prior three-year period.
- The individual has been convicted in the prior seven-year period of a felony, of violating Iowa Code section 321J.2 or 321J.2A (operating-while-intoxicated), or of any crime involving resisting law enforcement, dishonesty, injury to another person, damage to the property of another person, or

operating a vehicle in a manner that endangers another person.

- The individual is registered on the national sex offender registry.
- The individual is not at least 19 years of age.
- The individual is unable to provide any required information.²⁴

Application, Duties, and Receipt of Notice.

To become a TNC driver, an individual must submit an application to a TNC as discussed in the section of this Briefing related to TNCs.²⁵ The individual must also notify any other owner or lienholder of the vehicle that the individual intends to use the vehicle as a TNC driver. If an individual fails to so notify an owner or lienholder within the seven-day period prior to using the vehicle for such purposes, the individual is subject to a civil penalty of \$250,²⁶ which if left unpaid may prevent the vehicle's registration from being renewed.²⁷

As previously discussed, before a driver may accept a request from a rider for a prearranged ride on a TNC's digital network, the driver must receive a written insurance disclosure and notification from the TNC.²⁸

Insurance Requirements. As previously discussed, a TNC, a TNC driver, or a combination of the two is required to maintain specific types of insurance in certain required amounts.²⁹

A TNC driver must carry proof of insurance coverage in the required amounts at all times during which the driver uses a vehicle in connection with the use of a TNC's digital network. In the event of an accident, the driver is required to provide proof of insurance coverage to any directly interested party or insurer, and to any investigating police officer, upon request and in a format provided for under Iowa Code section 321.20B. Upon such a request, the driver is also required to disclose whether the driver was logged on to a TNC's digital network or was providing a prearranged ride at the time of the accident.³⁰

Limitations Relating to Riders. A TNC driver is prohibited from soliciting or accepting riders hailing the driver from the street.³¹

Transportation Network Company Riders

A TNC rider is an individual or group of individuals who uses a TNC's digital network to connect with a TNC driver to request a prearranged ride, and who receives the prearranged ride in the driver's vehicle between locations chosen by the individual or group.³² A rider is entitled to receive from a TNC a picture that prominently displays the face of the driver, and the make, model, and registration plate number of the vehicle used by the driver.³³ A rider is also entitled to receive from the TNC an electronic receipt containing the origin and destination of the trip, the total time and distance of the trip, and an itemized account of the total fare paid by the rider.³⁴

As previously discussed, a rider's personal information may not be disclosed to a third party except under certain circumstances. A TNC may disclose a rider's name and telephone number to the driver providing a prearranged ride to the rider.³⁵

Insurers

Insurance covering TNCs and TNC drivers must be provided by an insurer governed by Iowa Code chapter 515 (insurance other than life) or 518 (county mutual insurance associations), or by a surplus lines insurer governed by Iowa Code chapter 515I.³⁶ An insurer may exclude any and all coverage for injury or loss that occurs while the insured individual is logged on to a TNC's digital network or is providing a prearranged ride. However, nothing precludes an insurer from providing coverage for a TNC driver's vehicle if the insurer chooses to do so by contract or endorsement.³⁷ An insurer that excludes such coverage does not have a duty to defend or indemnify an excluded claim, and an insurer that defends or indemnifies a claim that is excluded under the terms of the

driver's policy has a right of action for contribution or indemnity against the insurer providing the applicable coverage.³⁸

As discussed above, in a claims coverage investigation, any insurer providing coverage is required to cooperate with any involved TNC to facilitate the exchange of relevant information with one another.³⁹

Local Governments

A political subdivision of the state is prohibited from enacting any unauthorized ordinance regulating TNCs, TNC drivers, or TNC drivers' vehicles.⁴⁰ As previously mentioned, on January 1, 2017, all local ordinances, regulations, and rules relating to the operation of TNCs inconsistent with Iowa Code chapter 321N are void. However, this does not affect the validity of any proceeding brought or punishment imposed prior to January 1, 2017, for a violation of such a local ordinance, regulation, or rule.⁴¹

A county treasurer must refuse to renew the registration of a vehicle if the county treasurer knows that the registration applicant has not paid a civil penalty imposed for the applicant's failure to notify an owner or lienholder of the vehicle prior to acting as a TNC driver. The county treasurer may collect the civil penalty, must update the vehicle registration records on a daily basis for all applicants who have paid such civil penalties, and must forward all funds collected on behalf of the DOT to the DOT.⁴²

The Department of Transportation

The DOT exclusively controls, supervises, and regulates TNCs, TNC drivers, and personal vehicles used by TNC drivers.⁴³ Upon the filing of a permit application by a TNC with the DOT, and a determination by the DOT that the TNC is in compliance with the provisions of Iowa Code chapter 321N, the DOT must issue a permit to the TNC.⁴⁴ The DOT may deny issuance of a permit if the DOT determines, and evidence demonstrates, that the TNC is not in compliance or is unable to comply with the

provisions of Iowa Code chapter 321N.⁴⁵ All fees received by the DOT for issued permits are required to be paid monthly to the Treasurer of State and deposited in the Road Use Tax Fund.⁴⁶

The DOT may suspend a TNC's permit for a violation of Iowa Code chapter 321N or of an administrative rule adopted under Iowa Code chapter 321N until the TNC demonstrates that the TNC is in compliance with the applicable requirements. The DOT may revoke a TNC's permit for continued noncompliance.⁴⁷ To determine whether a TNC is in compliance with the applicable requirements, the DOT may examine a TNC's records, including a random sample of the TNC's records related to drivers and prearranged rides. An examination is required to take place at the DOT's motor vehicle division building unless another location is agreed to by the DOT and the TNC, and such examinations may not occur more than twice per year unless additional examinations are necessary to investigate a complaint. Records obtained by the DOT through such examinations are not public records or otherwise subject to Iowa Code chapter 22 (examination of public records) and must be kept confidential.⁴⁸

If an individual fails to notify a lienholder or an owner of a vehicle prior to using the vehicle as a TNC driver, the DOT must assess a civil penalty of \$250 against the individual. All such penalties are to be paid monthly to the Treasurer of State and deposited in the Road Use Tax Fund.⁴⁹ The DOT must also refuse to renew the registration of a vehicle if the DOT knows that the registration applicant has not paid the civil penalty. The DOT is required to notify county treasurers of individuals who have not paid such civil penalties.⁵⁰

¹ Iowa Code section 321.1, subsection 36, defines "local authorities" to mean "every county, municipal, and other local board or body having authority to

adopt local police regulations under the Constitution and laws of this state.”

² 2016 Iowa Code §321.236(7).

³ 2016 Iowa Acts, ch. 1101, §24.

⁴ 2016 Iowa Acts, ch. 1101, §23.

⁵ Iowa Code §321N.1(5).

⁶ Iowa Code §321N.2(1).

⁷ Iowa Code §321N.2(2).

⁸ Iowa Code §321N.2(3).

⁹ Iowa Code §321N.3(5).

¹⁰ Iowa Code §321N.2(2)(a)(8).

¹¹ Iowa Code §321N.3(2).

¹² Iowa Code §321N.5.

¹³ Iowa Code §321N.4(1), (2)(c), (3)(c).

¹⁴ Iowa Code §321N.4(2).

¹⁵ Iowa Code §321N.4(3).

¹⁶ Iowa Code §321N.4(4).

¹⁷ Iowa Code §321N.6(3).

¹⁸ Iowa Code §321N.7.

¹⁹ Iowa Code §321N.8.

²⁰ Iowa Code §321N.10(1). Personal information includes but is not limited to the rider’s name, home address, telephone number, and payment information.

²¹ Iowa Code §321N.10(2).

²² Iowa Code §321N.1(6).

²³ Iowa Code §321.1(8)(j).

²⁴ Iowa Code §321N.3(4). See Iowa Code section 321N.3(2)(d) and (3) for certain required information.

²⁵ Iowa Code §321N.3(2).

²⁶ Iowa Code §321N.3(3).

²⁷ Iowa Code §321.40(7).

²⁸ Iowa Code §321N.5.

²⁹ Iowa Code §321N.4(1)-(3).

³⁰ Iowa Code §321N.4(8).

³¹ Iowa Code §321N.9.

³² Iowa Code §321N.1(7).

³³ Iowa Code §321N.7.

³⁴ Iowa Code §321N.8.

³⁵ Iowa Code §321N.10.

³⁶ Iowa Code §321N.4(6).

³⁷ Iowa Code §321N.6(1).

³⁸ Iowa Code §321N.6(2).

³⁹ Iowa Code §321N.6(3).

⁴⁰ Iowa Code §321N.11(1). This does not apply to the rights and powers of a commercial service airport to regulate the operation of vehicles on the airport’s premises in accordance with rules, regulations, and policies adopted for the orderly use of the airport, or to establish, alter, and collect rates, fees, rental payments, or other charges for the use of the airport’s services and facilities.

⁴¹ 2016 Iowa Acts, ch. 1101, §23.

⁴² Iowa Code §321.40(7).

⁴³ Iowa Code §321N.11(1).

⁴⁴ Iowa Code §321N.2(2)(a).

⁴⁵ Iowa Code §321N.2(4).

⁴⁶ Iowa Code §321N.2(2)(b).

⁴⁷ Iowa Code §321N.2(6).

⁴⁸ Iowa Code §321N.2(5).

⁴⁹ Iowa Code §321N.3(3).

⁵⁰ Iowa Code §321.40(7).

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